Supreme Court of the United States.

OCTOBER TERM, 1971.

No. 71-1526.

THOMAS S. EISENSTADT,
SHERIFF OF SUFFOLK COUNTY,
Petitioner,
v.
I. CHARLES BAKER,
Respondent.

RESPONDENT'S BRIEF IN OPPOSITION TO THE PETITION FOR CERTIORARI.

Statement.

As a result of statements made by one Michael Raymond before the McLellan Committee, an investigation into alleged judicial misconduct began in Massachusetts. Raymond alleged that he had paid a substantial amount of money to respondent to secure through one of two accused judges a favorable disposition in a pending criminal case (Appendix C, p. 37).

On October 5, 1971, respondent was indicted for larceny (App. D, p. 46). Respondent was subsequently subpoenaed to testify on November 15, 1971, at a hearing conducted by the Supreme Judicial Court with regard to the alleged

judicial misconduct. Respondent moved to quash the subpoena asserting that his Fourth, Fifth and Fourteenth Amendment rights would be violated were he to be compelled to testify (App. D, p. 46). Counsel for respondent orally informed the Supreme Judicial Court that if respondent were called to the stand he would invoke the privilege against self-incrimination (Tr. 726). When the respondent took the stand he was asked if he intended to answer questions put to him: he replied, "Sir, my answer is no . . ." (App. D, p. 60).

Forty-five questions were put to respondent and he was found in contempt for each refusal. The Supreme Judicial Court divided thirty-five of the refusals into five categories. For the offenses within each category respondent received five-month concurrent sentences; however, the five group sentences were imposed consecutively. Respondent received an aggregate twenty-nine month sentence (App. D, p. 53).

An application for a writ of habeas corpus was denied in the Federal District Court for the District of Massachusetts (App. C, p. 43). The Court of Appeals ordered the District Court to issue the writ (App. E, p. 66). The nub of the holding of the Court of Appeals was that there was but a single contempt and since the Supreme Judicial Court imposed a five-month sentence on the first group of offenses, the sentence could not exceed the initial five months (App. D, p. 65).

Argument.

The decision below, in this respect, is correct. The question does not present a new or novel issue. It was decided by this Court in 1957. *Yates* v. *United States*, 355 U.S. 66. The federal courts have uniformly concluded that separate refusals to answer questions in the same proceeding cannot

be the subject of multiple contempts. *United States* v. *Costello,* 198 F. 2d 200 (2d Cir.), cert. denied, 344 U.S. 874, reh'g. denied, 344 U.S. 900 (1952); *United States* v. *Orman,* 207 F. 2d 148 (3d Cir., 1953); *United States* v. *Kamin,* 135 F. Supp. 382 (D. Mass., 1955); *United States* v. *Emspak,* 95 F. Supp. 1012 (D. D.C., 1951); *United States* v. *Yukio Abe,* 95 F. Supp. 991 (D. Hawaii, 1950).

The revised sentence of five months was in exact conformance with the procedure in *Yates* v. *United States,* 355 U.S. 66, and is consistent with well recognized constitutional principles. *North Carolina* v. *Pearce,* 395 U.S. 711 (1969).

Conclusion.

The ruling was correct. There is no conflict of decisions. It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

Respectfully submitted,

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